

## REMARKS

Claims 1-20 and 22 were pending, Claims 11-17 having been withdrawn. With the present Amendment, Claims 1, 8, 10 and 20 are amended, Claims 13-17 are rejoined, Claim 12 is canceled, and new Claim 23 is added. Therefore Claims 1-10, 13-20, and 22-23 remain pending for consideration.

### **Election/Restriction**

The Applicants appreciate the Examiner's acknowledgement of Applicant's election with traverse of Invention I in the reply of January 12, 2011 and for rejoining Claims 13-17. Applicant's acknowledge the species restriction in which the Office Action identifies Species I as corresponding to Figs. 2-6 (and Claims 11-12) and Species II as corresponding to Figs. 9-13 (and Claims 2-10, 13-20, and 22). The Office Action indicates that Claim 1 is generic to both species.

Although the Applicants do not necessarily agree with the species restriction, Applicants elect Species II.

### **Drawings**

The Office Action objects to the drawings as failing to comply with 37 C.F.R. § 1.84(p)(5). In particular the Office Action indicates that reference number 95 of Fig. 17 is not mentioned in the description. Applicants have amended Fig. 17 to remove reference number 95. The Office Action also indicates that reference signs 40 and 41 are mentioned in the specification (at page 7, line 31 and page 11, line 25) but do not appear in the drawings. The Applicant has amended the specification to refer only to reference sign 41 and has amended Figs. 2 and 6 to show that feature. Each corrected drawing sheet is labeled in its top margin as a "Replacement Sheet."

### **Abstract**

Although Applicants understand the Office Action's statements regarding the Abstract as merely suggestions of desired language, Applicant has amended the Abstract to expedite prosecution.

### **Specification**

The Applicants have amended the specification to correct the various typographical errors identified in the Office Action.

### **Claim Objections**

Claims 1, 10, and 20 stand objected-to for various informalities. The Claim amendments provided above address the informalities. Applicants therefore request withdrawal of the claim objections.

### **Claim Rejections Under 35 U.S.C. § 112**

Claims 1-7, 9-10, 13-20 and 22 stand rejected under 35 U.S.C. § 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. Claims 1 and 8 have been amended to address the indefiniteness issues and therefore Applicants respectfully request withdrawal of the rejection of these claims.

### **Claim Rejections Under 35 U.S.C. § 102**

Claims 1, 2, 4-7, 9 and 22 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Publication No. 2005/0011524 to Thomlinson, et al. Applicants respectfully traverse the rejection at least because Thomlinson fails to describe all of the claim language.

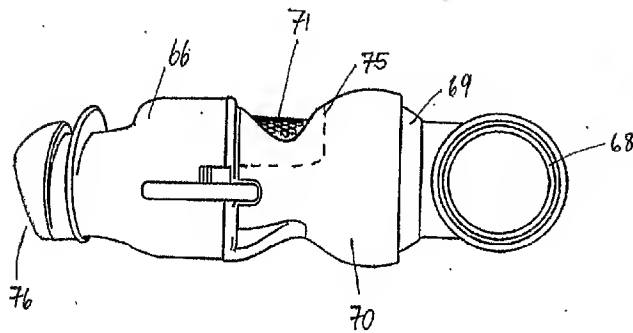
For example, Claim 1 has been amended to recite, among other things (emphasis added):

1. A breathing assistance apparatus comprising:  
a nasal cannula . . . ,  
wherein said nasal cannula includes at least one prong . . . *having an opening at its end, wherein the opening is formed in a plane that is oriented at an angle with respect to a transverse plane, the transverse plane being transverse to a longitudinal axis of a portion of the prong extending from the opening*, such that in use, gases flowing through said prong are directed to said user's nasal passages.

In contrast to Thomlinson, Claim 1 requires a nasal cannula having at least one prong having an opening at its end, wherein the opening is formed in a plane that is oriented at an angle with respect to a transverse plane, the transverse plane being transverse to a longitudinal axis of a portion of the prong extending from the opening.

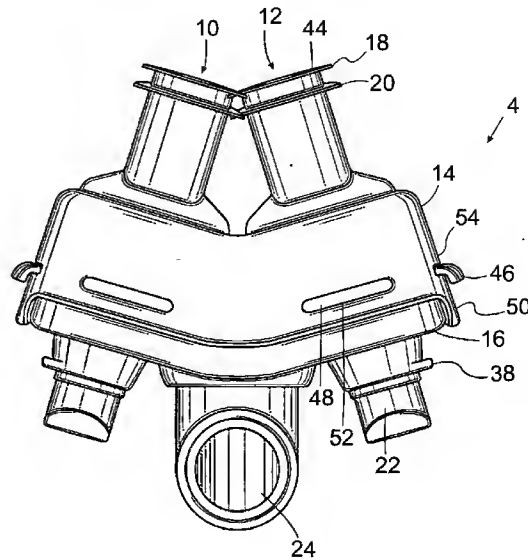
For example, Figure 10 of Applicant's disclosure illustrates one embodiment of such opening formed at "angled and profiled end 76" (see paragraph [0062] and Figure 10, below). In

contrast, Thomlinson's cannula's prongs' 10, 12 ends are not angled with respect to a plane transverse to a longitudinal axis of a portion of a prong extending from the opening (see below).



**Figure 10**

Applicant's Figure 10



**Fig. 6**

Thomlinson's Figure 6

Therefore, for at least these reasons, Claim 1 distinguishes over the applied art. Claims 2, 4-7, 9 and 22 depend from Claim 1. Therefore, Claims 2, 4-7, 9, and 22 distinguish over the applied art for at least the same reasons discussed above with respect to Claim 1. In addition, Claims 2, 4-7, 9, and 22 distinguish over the applied art for the unique combinations of features recited in those claims.

### **Claim Rejections Under 35 U.S.C. § 103**

Claim 3 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Thomlinson in view of U.S. Patent No. 6,298,850 to Argraves. Claim 8 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Thomlinson in view of U.S. Publication No. 2005/0205096 to Matula, Jr. et al. Claims 10 and 13-19 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Thomlinson in view of U.S. Application No. 2002/0096178 to Ziaee. Finally, Claim 20 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Thomlinson in view of Ziaee and further in view of U.S. Patent No. 6,651,658 to Hill, et al.

Applicants respectfully traverse the rejection, at least because Claims 3, 8, 10, and 13-20 depend from Claim 1, which distinguishes over the applied art for the reasons discussed above. Therefore, Claims 3, 8, 10, and 13-20 distinguish over the applied art for at least the same

reasons. In addition, Claims 3, 8, 10, and 13-20 distinguish over the applied art for the unique combinations of features recited in those claims.

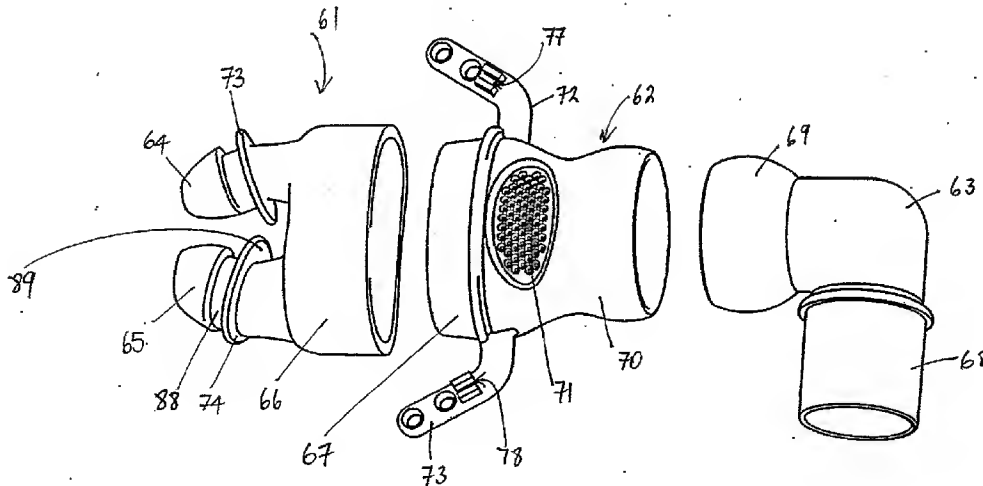
### **New Claim**

New Claim 23 distinguishes over the applied art at least because the applied art fails to teach or suggest all of the language of this Claim.

For example, Claim 23 describes, among other things (emphasis added):

23. A breathing assistance apparatus comprising:  
a nasal cannula . . . , said nasal cannula defining a longitudinal axis  
along its length; . . .  
*said at least one prong comprising a first portion extending  
substantially parallel to the nasal cannula's longitudinal axis, and a  
second portion extending from the first portion at an angle with respect to  
the nasal cannula's longitudinal axis . . . .*

In contrast to the applied art, Claim 23 requires a prong having a first portion extending substantially parallel to a nasal cannula's longitudinal axis and a second portion extending from the portion at an angle with respect to the nasal cannula's longitudinal axis. Such features are illustrated at least at Figure 11 (see below).



**Figure 11**

Therefore, for at least this reason, Claim 23 distinguishes over the applied art, as well.

**No Disclaimers or Disavowals**

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

**Conclusion**

The Application is now in condition for allowance and Applicants respectfully request the same. If the Examiner has any questions which may be answered by telephone, the Examiner is invited to call the undersigned directly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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